

07-60372

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MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District <u>SOUTHERN DISTRICT OF FLORIDA</u>
Name (under which you were convicted): <u>JEARMAINE C. WILLIAMS</u>		Docket or Case No.: <u>00-6312-CA-DIMITROULEAS</u>
Place of Confinement: <u>Federal Correctional Institution - Miami</u>		Prisoner No.: <u>55514-004</u>
<u>UNITED STATES OF AMERICA</u>		Movant (include name under which you were convicted) <u>JEARMAINE C. WILLIAMS</u>

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
(b) Criminal docket or case number (if you know): 00-6312-CA-DIMITROULEAS
2. (a) Date of the judgment of conviction (if you know): April 16, 2002  
(b) Date of sentencing: April 03, 2002
3. Length of sentence: 185 months → 120 mths consecutive to 65 mths
4. Nature of crime (all counts): (1) One count of conspiracy to commit Robbery in violation of Title 18 U.S.C section 1951(a); (2) One count of attempted Robbery in violation of Title 18 U.S.C section 1951(a); (3) Possession of a firearm in relation to a crime of violence in violation of Title 18 U.S.C section 924(c)
5. (a) What was your plea? (Check one)  
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐  
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☒  
cat / div 2355 Broward  
Case # 0:07cr60372  
Judge Dimitrouleas Mag PAW  
Motn lfp \_\_\_\_\_ Fee pd \$ \_\_\_\_\_  
Receipt # \_\_\_\_\_

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

(a) Name of court: UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

(b) Docket or case number (if you know): \_\_\_\_\_

(c) Result: REVERSE AND REMANDED

(d) Date of result (if you know): AUGUST 05, 2003

(e) Citation to the case (if you know): U.S. Williams, 340 F.3d 1231 (11 Cir. 2003)

(f) Grounds raised: Whether the district court properly applied the sentencing guidelines by refusing to group together the harms caused to two(2) different victims during a bank robbery attempt.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒
- If "Yes," answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: UNITED STATES DISTRICT COURT, SOUTHEAST DISTRICT OF FLORIDA

(2) Docket or case number (if you know): 06-61536-CIV-DIMITAOULEAS

(3) Date of filing (if you know): October 11, 2006

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(4) Nature of the proceeding: Petition for Habeas Corpus pursuant to Title 28 U.S.C. § 22

(5) Grounds raised: whether the District Court violated the principles of double jeopardy by convicting defendant of Attempted Robbery and the discharge of a firearm.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: Dismissed without Prejudice

(8) Date of result (if you know): October 23, 2006

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐ Appeal WITHDRAWN.

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: I decided to first exhaust all remedies available to me in the District Court before proceeding to the Appellate Court.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective assistance of Counsel - Affirmative misadvice.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Counsel advised me that if I actually won at trial, then the State Attorney could and possibly would file Attempted Murder charges against me in the State Courts. However If I was to plea guilty to the Guidelines, then the case would end at that moment. I plead guilty to the Indictment on Jan. 15, 2002. The Court records will show that pre-trial motions were heard on Jan. 14, 2002, and jury selection was set for Jan. 15, 2002. I would have proceeded to a jury trial had I known that 3yrs later I would be given a "life sentence" after pleading guilty in state court based on the fact that I had plea guilty to federal offenses arising out of the same criminal episode.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: AT the time of my direct appeal, I was not yet charged with the state offenses.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

GROUND TWO: \_\_\_\_\_  
\_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND THREE:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?  
Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?  
Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

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Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?  
Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?  
Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?  
Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

GROUND FOUR: \_\_\_\_\_  
\_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?  
Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?  
Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?  
Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?  
Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?  
Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court?  
If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: ineffective assistance of counsel - I filed a  
motion pursuant to title 28 USC 2241(a) attacking the constitutionality  
of the sentence which according the District Judge was not  
the proper avenue for such an attack. By filing this motion  
I was in effect asking the Court to grant permission to file a  
2255. I was not aware at the time about the proper  
procedure of the order in which such motions should be filed.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court  
for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of  
proceeding, and the issues raised. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following  
stages of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_  
\_\_\_\_\_

(b) At arraignment and plea: Daryl Wilcox, Federal Public Defenders Office;  
One East Broward Blvd, Fort. Lauderdale, Florida

(c) At trial: \_\_\_\_\_  
\_\_\_\_\_

(d) At sentencing: Daryl Wilcox, One East Broward Blvd, FT. Lauderdale  
Florida.

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- (e) On appeal: Daryl Wilcox, One East Broward Blvd, Fort Lauderdale  
Florida.
- (f) In any post-conviction proceeding: \_\_\_\_\_
- (g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_
16. Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: 17TH Judicial Circuit Court, Broward County, Florida
- (b) Give the date the other sentence was imposed: August 19, 2005
- (c) Give the length of the other sentence: "LIFE" w/o Parole
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\* After resentencing on Dec. 04, 2003 I was turned over to the custody of the Broward County Sheriff's Office to face state criminal charges arising out of the Oct. 20, 2000 incident. I was arraigned on Dec. 12, 2003, plea nolle contendere in June 2005, and was sentenced on Aug. 19, 2005. I remained in the custody of the until Sept. 12, 2005 and was released into the general Federal prisoner population on Nov. 2, 2006. I then began filing with the courts on Oct. 11, 2006, however I began my filings with the District Courts via the wrong particular proceedings. On Dec. 04, 2003, after resentencing, Attorney Wilcox was made aware of the state filing charges, however it was never made clear to me that he had given me affirmative mis-advice which constituted an ineffective assistance of counsel. His response was only that he would look into the matter.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —


- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Involuntary plea base  
on the gross misadvice of my Attorney which amounts to an  
ineffective assistance of counsel.  
or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct  
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on March  
13, 2007 (month, date, year).

Executed (signed) on 3-12-07 (date).

  
JEANNE C. WILLIAMS  
Signature of Movant  
U.S.M# 55514-004  
S.S.# 592-65-6819

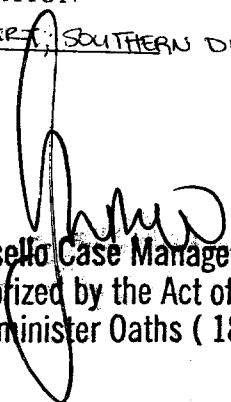
If the person signing is not movant, state relationship to movant and explain why movant is not  
signing this motion. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN FORMA PAUPERIS DECLARATION

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF Florida

[Insert appropriate court]

\*\*\*\*\*

  
J. Rosello Case Manager,  
Authorized by the Act of July 7, 1955  
to Administer Oaths ( 18 USC 4004 )